

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Criminal Action No. 3:19-CR-029-CHB
)
v.)
) **ORDER DENYING MOTION TO**
TIMOTHY JOHN LEWIS,) **SUPPRESS EVIDENCE**
)
Defendant.)

*** * *** *** *

This matter is before the Court on the Motion to Suppress Evidence [R. 26] filed by Defendant. The United States has responded to the motion [R. 35], which is now ripe.

I. ANALYSIS

While the parties agree that it is the government's burden to show the constitutionality of a warrantless search, [*see* R. 26 p. 3; R. 35 p. 2], “[i]t is well settled that in seeking suppression of evidence the burden of proof is upon the defendant to display a violation of some constitutional or statutory right justifying suppression.” *U.S. v. Rodriguez-Suazo*, 346 F.3d 637, 643 (6th Cir. 2003) (citation omitted). For the reasons explained below, the Court finds that the Defendant has failed to meet his burden, while the government has met its burden.

The Court notes as an initial matter that the legal basis for the motion (which counsel wrote was filed at the express direction of the Defendant) is unclear. [R. 26 p. 1] The motion states “[a]s grounds for this motion, defendant states that the traffic stop, seizure of Mr. Lewis, and the police searches were all done without the benefit of a search warrant.” [R. 26 p. 2] Citing to various cases, it accurately recounts that warrantless searches only pass constitutional muster pursuant to “a few specifically established and well-delineated exceptions” and states that

“[t]he government bears the burden that the warrant-less acts of law enforcement fall within one of the few specifically established and well-delineated exceptions.” *Id.* pp. 2–3. It then states in a conclusory manner that “[a]s such, said stop of [Defendant] and the subsequent searches were illegal” and must be suppressed. *Id.* p. 3 (citing *Carroll v. U.S.*, 267 U.S. 132 (1925) and *Terry v. Ohio*, 392 U.S. 1, 14 (1968)). The motion contains no analysis or reasoning explaining why the Defendant thinks the stop, seizure, and searches were improper, leaving the Court unable to ascertain what the issue is. While the Court understands that the motion was filed at the Defendant’s direction, the motion does not meet the standard of LCrR 12.1(a), which provides that “[a] motion must state with particularity the grounds for the motion . . . and the legal argument necessary to support it.” The Defendant not only mustered no evidence, he mustered no real arguments. This alone is grounds to deny the motion.

In addition, the response of the United States, along with the video footage of the arresting officer’s body camera and dash cam (which the United States filed and referenced in its response), affirmatively make clear that the search of the vehicle and the ground beneath it was lawful. That footage depicts essentially the facts as described by the United States in its response. It shows that the officer pulled over the vehicle in question (a pickup truck) in a parking lot. He then approached the vehicle on the driver’s side and spoke to the driver, telling her that the reason he pulled her over was for a seatbelt violation. The driver admitted to not having a valid driver’s license. The officer asked why everyone in the car was so nervous. The passenger on the far-right side (Defendant) repeatedly made large movements with his hands and arms, opening his backpack and reaching inside at least twice, despite the officer instructing him multiple times to keep his hands on the dash. Defendant first told the officer his identification was in his backpack, but after reaching inside his backpack, then said that the identification was

actually in his pocket. The officer then walked around to the passenger side and observed Defendant. Defendant appeared to reach in his shorts and moved the backpack around with one hand, until the officer told him to stop and that “I can see it in your hand.” The officer told Defendant to put the backpack down. Defendant did not comply until the officer pulled the backpack from his hands. The officer told Defendant to open the door and warned him not to “make me yank you out of the car.” Defendant moved in his seat but did not get out of the car. At this point, the video clearly shows Defendant with an object in his hand, which he then put in his mouth. The officer pulled Defendant out of the vehicle and several objects, including small clear plastic bags containing what appear to be white substances, along with a knife, fell to the ground. The officer handcuffed Defendant and had him stand against the right side of the pickup, close to the rear. He had the other passenger exit the vehicle, handcuffed her, and had her stand to the right of Defendant on the same side of the truck. He then moved Defendant to stand against the far-right side of the truck’s tailgate, where he searched Defendant. He moved the second passenger to stand against the far-left side of the truck’s tailgate. Next, the officer had the driver exit the vehicle and stand against the left side of the truck, towards the rear. He searched the driver, and then the second passenger. He read the three their rights. Eventually, additional officers arrived, and assisted the arresting officer in searching the vehicle. At some point, one officer looked at the ground underneath the truck. That officer pulled a gun from the ground under the right rear corner of the truck — approximately the location where Defendant had been standing.

“An officer may stop and detain a motorist so long as the officer has probable cause to believe that the motorist has violated a traffic law.” *U.S. v. Bell*, 555 F.3d 535, 539 (6th Cir. 2009) (citation omitted). As the United States points out, Ky. Rev. Stat. Ann. § 189.126(6)

requires both passengers and persons operating motor vehicles manufactured after 1981 on the public roadways of Kentucky to wear seat belts, unless the person is a child, has a written statement from a qualified medical professional that he cannot wear a seat belt, or is a letter carrier of the United States postal service engaged in the performance of his duties. Defendant does not deny that the other passenger was not wearing a seatbelt. Nor does he argue that any of the exceptions to the seatbelt law applied. Defendant also does not dispute that officer observed the seatbelt violation. Thus, the officer had probable cause to believe that the motorist had violated a traffic law, making the initial stop lawful. *See U.S. v. Draper*, 22 F. App'x 413, 415 (6th Cir. 2001) (finding officer had probable cause to make traffic stop where officer observed driver not wearing seatbelt in contravention of Tennessee's seatbelt law).

Once the vehicle was stopped, the officer was entitled to have its occupants exit the vehicle to ensure his own safety. *Maryland v. Wilson*, 519 U.S. 408, 415 (1997) ("an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.") This means that there was nothing wrong with the seizure of the Defendant pending the completion of the stop.

As the United States points out, the firearm which Defendant seeks to suppress was found later during the traffic stop, but not *inside* the vehicle; rather, it was found on the ground *underneath* the vehicle, apparently in plain view (once an officer thought to look there). [R. 35 p. 4] Hence, the gun was arguably not really the fruit of the search of the vehicle but was only the fruit of the stop of the vehicle and the removal of its occupants (which, as just discussed, were lawful). Indeed, while the parties did not brief this issue, it is not clear that the officer's actions in looking at the ground underneath the truck constituted a "search" for Fourth Amendment purposes. Defendant makes no argument that he exhibited an actual, reasonable expectation of

privacy in the parking-lot surface underneath the truck, or that this ground was a “constitutionally protected area” upon which the officers trespassed to obtain information. *See Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019) (describing the two approaches articulated by the Supreme Court to determine when government conduct constitutes a search: the “reasonable-expectation-of-privacy” *Katz* test, and the older “property-based” or trespassory approach).

Even assuming the firearm was the fruit of the search of the vehicle, that would not change the outcome. “Reasonable suspicion to perform a traffic stop may ripen into probable cause to search a vehicle based on the officer’s interactions with the vehicle’s occupants. Under the automobile exception to the warrant requirement, an officer may perform a warrantless search of a detained vehicle should the officer have probable cause to believe the vehicle contains contraband or evidence of criminal activity.” *U.S. v. Lyons*, 687 F.3d 754, 769–70 (6th Cir. 2012) (citations omitted). “Probable cause to search a vehicle is defined as reasonable grounds for belief, supported by less than *prima facie* proof but more than mere suspicion. Probable cause exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* at 764 (internal quotation marks and citations omitted). Defendant’s behavior surrounding his exit of the vehicle — acting nervous, repeatedly failing to comply with the officer’s instructions, refusing to exit the vehicle, and putting a bag in his mouth — along with the bags containing white substances which fell to the ground in plain view of the officer, gave the officer reasonable grounds to believe he would find contraband or evidence of a crime within the vehicle. Hence, the officer had probable cause to search the vehicle.

Finally, having reviewed the above-referenced footage (regarding which Defendant has lodged no complaint), and in light of the paucity of the Defendant’s Motion to Suppress, the

Court agrees that Defendant is not entitled to an evidentiary hearing (though he has not requested one). “A defendant must make some initial showing of contested facts before he is entitled to an evidentiary hearing. Evidentiary hearings on motions to suppress should be granted when the defendant alleges sufficient facts which if proven would justify relief.” *U.S. v. McGhee*, 161 F. App’x 441, 444 (6th Cir. 2005) (internal quotation marks and citations omitted). Defendant has not alleged any facts that are contested or which if proven would justify relief. Thus, even if one of the parties had requested an evidentiary hearing, there would be no need for one.

II. CONCLUSION

Accordingly, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Defendant’s **Motion to Suppress Evidence [R. 26]** is **DENIED**.

This the 14th day of November, 2019.



Claria Horn Boom

CLARIA HORN BOOM,
UNITED STATES DISTRICT COURT JUDGE
EASTERN AND WESTERN DISTRICTS OF
KENTUCKY

cc: Counsel of record